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WMC MORTGAGE CORP.

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 DONNIE KNAULS,

12 Plaintiff,

13 vs.

14 WMC MORTGAGE; ASC/AMERICA'S
SERVICING COMPANY; MORTGAGE
15 LENDERS NETWORK USA INC;
COUNTRYWIDE HOME LOANS
16

Defendants.
17

) CV NO. 07CV2233-DMS (NLS)
)

) NOTICE OF MOTION AND MOTION
) OF WMC MORTGAGE CORP. TO
) STRIKE PORTIONS OF PLAINTIFF'S
) COMPLAINT
)

) [F.R.C.P. Rule 12(f)]
)

) Oral Argument Not Required
)

) Hearing:
)

Date: March 7, 2008
18

Time: 1:30 p.m.

Courtroom: 10
19

Honorable Dana M. Sabraw
20

21 TO THE HONORABLE DANA M. SABRAW, UNITED STATES DISTRICT JUDGE; TO
22 PLAINTIFF, AND TO ALL INTERESTED PARTIES:

23 PLEASE TAKE NOTICE that on March 7, 2008, at 1:30 p.m., or as soon thereafter as the
24 matter may be heard, in Courtroom 10 of the above-entitled Court located at 880 Front Street,
25 San Diego, California 92101, WMC Mortgage Corp. ("WMC") for itself alone and for no other
26 defendants, will move the Court for an Order Striking Portions of Plaintiff's Complaint, pursuant to
27 F.R.C.P. section 12(f), because certain portions of the "allegations" of the Complaint are irrelevant,
28 redundant, immaterial, impertinent, scandalous, and improper requests for relief.

1 The Motion are based upon this Notice, the attached Memorandum of Points and Authorities,
2 the court file herein, and on such other oral and documentary evidence as may be presented at the
3 time of the hearing.

4 WHEREFORE, WMC respectfully requests that the Court strike the following portions of
5 plaintiff's complaint:

- 6 (1) Complaint, p. 5, l. 9, including all allegations referring to the United Nations
7 Convention;
- 8 (2) Complaint, p. 5, l. 26 through p. 6, l. 12), including all allegations referring to
9 Domestic Mixed War;
- 10 (3) Complaint, p. 7, ll. 1-9, inclusive, including all allegations referring to conspiracy;
- 11 (4) Complaint, p. 7, ll. 1-24, inclusive, including all allegations referring to treason;
- 12 (5) Complaint, p. 7, l. 26 through p. 8, l. 4, including all allegations referring to
13 racketeering.
- 14 (6) Complaint, p. 10, l. 27 through p. 11, l. 16, inclusive, including all requests for relief
15 under 18 U.S.C. sections 241, 872, 1001, 1963, 3571, 3623, as those code sections
16 relate to penalties available for "crimes and crime punishment."

17 WMC requests the aforementioned portions of plaintiff's Complaint by stricken in their
18 entirety, and grant such other and further relief as the Court deems just and proper.

19 Dated: January 23, 2008

Respectfully submitted,

CUNNINGHAM & TREADWELL

21 By: 

22 DAVID S. BARTELSTONE
23 Attorneys for Defendant,
24 WMC MORTGAGE CORP.
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MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION

Defendant, WMC Mortgage Corp., is believed to have been sued in this action relating to its loan of \$344,000.00 to plaintiff, Donnie Knauls, on December 29, 2006, and relating to the real property located at 2360 Cypress Avenue, Lemon Grove, CA , 91945. It is believed that WMC is being sued for violations of "Regulation Z Truth and Lending Action, Title 5 [sic] U.S.C. section 1635(a), Title 12 C.F.R. 226.23(D)(I)), although due to the completely unintelligible nature of the Complaint, WMC cannot apprise itself of what violations it is alleged to have committed and to what it must defend itself against.

The "allegations" of plaintiff's Complaint relating to the "United Nations Convention" (Complaint, p. 5, l. 9), "Domestic Mixed War" (Complaint, p. 5, l. 26 through p. 6, l. 12), conspiracy (Complaint, p. 7, ll. 1-9, inclusive), treason (Complaint, p. 7, ll. 1-24, inclusive), racketeering (Complaint, p. 7, l. 26 through p. 8, l. 4), and the improper requests for relief under the "crimes and criminal procedure" section of the United States Code, must be stricken as irrelevant, redundant, immaterial, impertinent, scandalous.

2. ARGUMENT

I. RULE 12(f).

Before responding to a pleading, a party may move to strike any "insufficient defense or any redundant, immaterial, impertinent or scandalous matter. (F.R.C.P. 12(f).) A motion to strike may be granted where "it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation." (LeDuc v. Kentucky Central Life Ins. Co (ND CA 1992) 814 F.Supp. 820, 830.)

"Redundant" has been defined as including allegations that are wholly foreign to the issues involved or the needless repetition of allegations. (Gilbert v. Eli Lilly Co., Inc. (D. PR. 1972) 56 FRD 116, 120, fn. 4.) "Immaterial" means the matter has no bearing on the controversy before the court. (Fantasy, Inc. v. Fogerty (9th Cir. 1993) 984 F.2d 1524, 1527; Johnson v. American Aviation Corp. (D. N.D. 1974) 64 F.R.D. 435, 438-439.) "Impertinent" has been defined to include allegations that are not responsive or relevant to issues involved in the action and which could not be

1 admitted as evidence in the action. (Id.) "Scandalous" has been defined as allegations that cast a
 2 "cruelly" derogatory light on a party or other person. (Skadegaard v. Farrell (D NJ 1984) 578
 3 F.Supp. 1209, 1221; Talbot v. Robert Matthews Distributing Co. (7th Cir. 1992) 961 F.2d 654, 665.)

4 Clearly, the aforementioned portions of plaintiff's complaint have **absolutely nothing** to do
 5 with any violations of Regulation Z or the Truth in Lending statutes. Moreover, the monetary
 6 damages requested by plaintiff (Complaint, p. 10, l. 27 through p. 11, l. 16, inclusive) are based on
 7 criminal procedures codes of the United States Code. Quite obviously this is not a criminal case and
 8 relief cannot be sought under criminal statutes.

9 The "allegations" of plaintiff's Complaint relating to the "United Nations Convention"
 10 (Complaint, p. 5, l. 9), "Domestic Mixed War" (Complaint, p. 5, l. 26 through p. 6, l. 12), conspiracy
 11 (Complaint, p. 7, ll. 1-9, inclusive), treason (Complaint, p. 7, ll. 1-24, inclusive), racketeering
 12 (Complaint, p. 7, l. 26 through p. 8, l. 4), and the improper requests for relief under the "crimes and
 13 criminal procedure" section of the United States Code, must be stricken as irrelevant, redundant,
 14 immaterial, impertinent, scandalous. There are zero charging allegations as against WMC and
 15 relating to these "allegations."

16 **3. CONCLUSION**

17 The cited portions of plaintiff's Complaint are clearly improper, and lack any sufficiency or
 18 propriety in the Complaint. WMC requests this Court to strike the following portions of plaintiff's
 19 Complaint:

- 20 (1) Complaint, p. 5, l. 9, including all allegations referring to the United Nations
 21 Convention;
- 22 (2) Complaint, p. 5, l. 26 through p. 6, l. 12), including all allegations referring to
 23 Domestic Mixed War;
- 24 (3) Complaint, p. 7, ll. 1-9, inclusive, including all allegations referring to conspiracy;
- 25 (4) Complaint, p. 7, ll. 1-24, inclusive, including all allegations referring to treason;
- 26 (5) Complaint, p. 7, l. 26 through p. 8, l. 4, including all allegations referring to
 27 racketeering.

28 ///

1 (6) Complaint, p. 10, l. 27 through p. 11, l. 16, inclusive, including all requests for relief
2 under 18 U.S.C. sections 241, 872, 1001, 1963, 3571, 3623, as those code sections
3 relate to penalties available for "crimes and crime punishment."
4

5 Dated: January 23, 2008

Respectfully submitted,

6 CUNNINGHAM & TREADWELL

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8 By: 

9 DAVID S. BARTELSTONE
10 Attorneys for Defendant,
11 WMC MORTGAGE CORP.
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PROOF OF SERVICE
(1013a (3) CCP)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 21800 Oxnard Street, Suite 840, Woodland Hills, California.

On January 23, 2008, I served the foregoing document described as: **NOTICE OF MOTION AND MOTION OF WMC MORTGAGE CORP. TO STRIKE PORTIONS OF PLAINTIFF'S COMPLAINT** on the interested parties in this action:

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows:

Donnie Knauls
2360 Cypress Avenue
Lemon Grove, CA 91945

☒ BY MAIL

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Woodland Hills, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

☐ BY PERSONAL SERVICE

On the above date, I delivered such envelope(s) by hand to the office(s) of the addressee.

Executed on January 23, 2008, at Woodland Hills, California.

(State) ☐ I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) ☒ I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



JULIE DARBYSHIRE